



DRAFTING ARBITRATION AGREEMENTS THAT COMPLY WITH NJ'S HEIGHTENED STANDARD

BY: REYNOLD LAMBERT, ESQ., Counsel at Lowenstein Sandler LLP

Arbitration agreements that bar class claims are becoming increasingly ubiquitous in consumer contracts. This recent trend is not surprising. In 2011, the United States Supreme Court held that the Federal Arbitration Act (FAA) preempts per se bans on pre-dispute arbitration agreements that preclude plaintiffs from asserting claims on behalf of a class. See *AT&T Mobility v. Concepcion*, 563 U.S. 333 (2011). *Concepcion* opened the door for companies to insulate themselves from potentially crippling

class-action lawsuits by incorporating a class-action waiver into an arbitration agreement.

But some jurisdictions, including New Jersey, have been particularly reluctant to close courthouse doors to aggrieved plaintiffs and have sought to limit the sweep of *Concepcion*. Following that decision, the New Jersey Supreme Court announced that the enforceability of arbitration agreements will be measured by the rigorous standard applicable to waivers of substantive rights. Accordingly, in

drafting an arbitration agreement governed by New Jersey law, companies should understand and comport with recent case law addressing that jurisdiction's unique requirements because a class-action waiver likely will not be enforced in the absence of a valid arbitration agreement.

Arbitration as a Waiver of a Substantive Right

Although the FAA prevents courts from invalidating arbitration agreements based on "defenses that apply only

to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue," that statute "permits agreements to arbitrate to be invalidated by generally applicable contract defenses, such as fraud, duress, or unconscionability." *Concepcion*, 563 U.S. at 339 (internal quotation marks and citation omitted). Relying on this "savings clause," the New Jersey Supreme Court recently reiterated that the enforceability of arbitration agreements will be analyzed *continued on page 8*

SUPPORTING DREAMS AND THE FUTURE OF OUR NATION – PART II

BY: JAVIER DIAZ, ESQ.

Remember our all-star high school student Yaritza Aguilar? Well, with the help of Julia Lopez, Darlene Lapola, and many others who donated, Yaritza attended the Junior State of America (JSA) Summer Program at Georgetown University. I had the pleasure of catching up with Yaritza and reflect on her summer. She described her experience as priceless and empowering – further solidifying her passion for politics and issues impacting the Latino

community. At the JSA Summer Program, Yaritza met Senator Bob Menendez, visited several federal agencies, excelled in the program's curriculum, and most importantly expanded her analytical horizons. Don't take my word for it. Here's what Yaritza had to say:

"First off, I would like to thank the HBA-NJ for



making my dreams become a reality, without your support this trip would not have been possible.

The class, Media and Politics, gave me a chance to analyze campaign communications strategies involving the tools of social media, the Internet, and new campaign technologies, as well as traditional forms of rhetoric and media in which campaigns get their

personal message across. My final grade for the course was a 97 out of 100.

The program held speakers day in which students would visit places such as the White House, Department of Education, Department of State, the FCC and Capitol Hill. My favorite speakers day was visiting Capitol Hill. I was able to sit on the House floor and afterward visit Senator Menendez. I was able to thank him for all the hard work he has invested *continued on page 11*

MESSAGE FROM THE OUTGOING PRESIDENT CARLOS M. BOLLAR, ESQ.*

It has been my honor and privilege to serve as the 36th President of the Hispanic Bar Association of New Jersey ("HBA-NJ"). The HBA-NJ was awarded the 2016 Affiliate of the Year award from the Hispanic National Bar Association ("HNBA"), the fourth time we have received this prestigious honor. This award is a product of the countless hours volunteered by our dedicated Executive Board, Trustees, committee members and our membership. I am very proud of all that the HBA-NJ has been able to accomplish since I began my term as President.

One of the HBA-NJ accomplishments I am most proud of is the incredible support our association provides to law school and high school students. Through the generosity and dedication of our sponsors, we were able to award \$65,000 in scholarships to thirteen Latino students at the 35th Annual Scholarship Dinner Gala. These students are the future of our association and the next generation of leaders in our community. Our mentorship program was also an outstanding success pairing individual attorneys with law students to provide guidance as they

begin their careers in law. Our high school Pipeline Program continues to be a huge success, growing this year to two locations: Passaic and Union City high schools. The HBA-NJ was able to award scholarships to two Pipeline students this year.

The HBA-NJ had many other successful events and programs throughout the year. We were able to offer over 20 CLE credits through our dynamic programming, including the Corporate Counsel Roundtable, Federal Practice for the State Law Practitioner, Dos and Don'ts of Social Media, Doing Business in Cuba and the 15th Annual Sun, Surf and Seminar Conference in San Juan, Puerto Rico. We also had spectacular signature events including our Women's Empowerment Leadership Conference and a very special Supreme Court Swearing-In Ceremony where our membership had an opportunity to meet Justice Sonia Sotomayor.

The HBA-NJ also upheld our tradition



of helping the non-legal community. The Young Lawyers Committee continued the Summer of Service, as well as our annual Sandwich

and Toy Drives. The HBA-NJ also offered several Community Education Initiatives throughout the state, providing guidance for New Jersey residents in traditionally low-income areas. The HBA-NJ takes pride in being front and center in the fight for increased diversity in the judiciary. The HBA-NJ spent a considerable amount of time meeting with key stakeholders involved in the judicial appointment process, including Governor Chris Christie, dozens of Senators and other elected officials and the leadership of the New Jersey State Bar Association ("NJSBA"). This year the HBA-NJ led a coalition of affinity bar associations in putting additional pressure on New Jersey elected officials to increase diversity in the judiciary.

We also collaborated with the HNBA, NJSBA, county bar associations and

other affinity bars on many occasions in the past year. Three New Jersey attorneys had the privilege of being selected by the HNBA to be "Top Lawyers Under 40." To celebrate this amazing accomplishment, the HBA-NJ had a reception in Las Vegas to celebrate our award recipients. The HBA-NJ was an important stakeholder at the NJSBA 6th Annual Diversity Summit. We worked with each of the aforementioned bar associations on many other continuing legal education and networking programs.

The HBA-NJ has a long tradition of building on the success of our historic trailblazers. It is our obligation to honor our legacy and pave the way forward for our successors. I am confident that our incoming President, Arlene Quiñones Perez and the Board will lead the HBA-NJ to new heights in the coming year.

I thank the HBA-NJ and its membership for this experience and the opportunity to serve. ☺

**Carlos M. Bollar, Esq., is a Partner at the law firm of Archer & Greiner P.C. in the Haddonfield, NJ office.*



Q&A WITH OUR INCOMING PRESIDENT ARLENE QUIÑONES PEREZ, ESQ.*

Q. How and when did you initially become involved with the HBA-NJ and what inspired your involvement?

A. When I was attending law school at Rutgers School of Law-Camden, I joined and became the secretary for ALIANZA, the Latino Law Student Association at Rutgers Camden. I first learned about the HBA-NJ, because ALIANZA works closely with the HBA-NJ's Mentorship Program. While attending the programs sponsored by the HBA-NJ, I was awed by the passion of the members of the organization, their willingness to mentor the law school students, and even more inspired by their incredible commitment to the Latino community. Upon graduating law school in 2009, I was appointed by Miguel Pozo to join the Board as a Trustee, and have been a proud member of the organization since that time.

Q. How will your background and experience inspire your leadership as President of the HBA-NJ?

A. Prior to attending law school my career was focused on public service. I realized at a very young age the effect that government has on the lives of citizens and non-citizens on a daily basis. My career and working in the public sector strengthened my ability to provide support to our community and to give our community a voice to be heard. I believe that our law degree is a privilege and one that can be used to better the lives of our community through public advocacy, as well as the creation of laws. My leadership of the HBA-NJ will come through the lens of those ideals and principals. The HBA-NJ will continue to advocate strongly for our community and strongly for judicial diversity.

Q. What are some of the major initiatives and goals that you have planned for the HBA-NJ this upcoming year?

A. This year's theme is Community Activism leads to Progress. As such, the HBA-NJ will continue to be a strong advocate and voice for the Latino community. We will

work with the executive branch of government for the State of New Jersey to increase diversity throughout all sectors to ensure that our voice is heard before decisions are made that impact our community. We will continue to add our voice and work closely with the legislative branch of government to create legislation that has an immediate and lasting impact to our community.

Q. What new programs, if any, do you plan to roll out this year and how will they further the HBA-NJ's mission?

A. The HBA-NJ will continue to promote the programs that have been in place for the last 37 years of the organization's history. We will also add initiatives to continue to strengthen our relationship with the Executive and Legislative branches of government. For example, a Day of Action in Trenton where the HBA-NJ will sit with lawmakers and discuss legislation that will impact not only the Latino Community, but also the legal community as a whole. We will also continue to invite members of the Legislature as well as the Executive Branch to meet with the HBA-NJ on a monthly basis.

Q. When you complete your term as President of the HBA-NJ, how do you want your legacy to be remembered?

A. Hopefully, my legacy is viewed as one where I left the HBA-NJ even stronger in its relationships than when I first took over as President. A legacy where it is clear that the HBA-NJ must be at the table when a discussion occurs about judicial diversity. A legacy that leaves no doubt that the HBA-NJ can be relied upon to add to the discussion on legislation that will have an impact on our community and the legal community as a whole. That is the hope for my legacy.

*Arlene Quiñones Perez, Esq., is a Partner at the law firm of DeCotiis, Fitzpatrick & Cole, LLP, located in Teaneck, NJ. ☎



THE HBA-NJ CONGRATULATES THE FOLLOWING HBA-NJ MEMBERS FOR THEIR RECENT ACCOMPLISHMENTS AND MANY ACHIEVEMENTS. ¡SIEMPRE P'ALANTE!

Melinda Colón Cox, Esq.,

is the incoming Membership Secretary of the HBA-NJ and was elevated as a Partner at Parker Ibrahim & Berg LLC in 2016. Ms. Cox represents national banks and financial institutions, mortgage lenders and servicers, and small and large businesses with an emphasis in commercial litigation, contested foreclosures, consumer finance and protection, and state and federal regulatory compliance. Prior to joining the law firm of Parker Ibrahim & Berg LLC, Ms. Cox was a law clerk to the Hon. Michael A. Shipp, U.S.D.J. in the United States District Court for the District of New Jersey. Prior to her clerkship, Ms. Cox was an associate at a large New Jersey firm, as a member of the Redevelopment Team, Redevelopment Strategic Business Unit Team and the Commercial Real Estate Team. Melinda received her B.A. from Union College in Schenectady, New York, graduating *magna cum laude*. She received her J.D. from Rutgers School of Law – Newark, where she was the Senior Articles Editor for the Rutgers Law Review, President of the Association of Latin American Law Students, a Student Bar Association Class Representative and Co-Chair of the Student Affairs Committee for the Minority Student Program. Melinda has been on the Board of the Hispanic Bar Association of New Jersey since 2008, co-founded the Young Lawyers Committee in 2009 and is the Co-Chair of the *Abogados* Newsletter. She is admitted to practice in New Jersey and New York and is a member of the New Jersey State Bar Association (elected as a Fellow to the inaugural class of the 2015 Leader Academy), the New Jersey Women Lawyers Association, and the National Women's Law Center's Leadership Advisory Committee.



Michael Jay Plata, Esq.

recently joined Archer & Greiner P.C. as a Partner in the Business Litigation Group and is the former President of the Hispanic Bar Association of New Jersey. His practice is focused on complex business and commercial litigation in federal and state courts, such as breach of contracts, business torts, and shareholder disputes. Mr. Plata has also directed litigation in matters as diverse as environmental law, employment law, Section 1983 litigation, franchise law, licensing disputes, restrictive covenants, and insurance coverage disputes for several public entities and companies of all sizes. Mr. Plata is a magna cum laude graduate of Florida State University and a graduate of Rutgers School of Law-Newark, where he was Editor-in-Chief of the Rutgers Race



and the Law Review. After graduating from law school, Mr. Plata served as a law clerk to The Honorable Ariel A. Rodriguez, Judge, Appellate Division, Superior Court of New Jersey, and thereafter, The Honorable John E. Wallace, Jr., Associate Justice, Supreme Court of New Jersey. Mr. Plata was named a "Rising Star" for the 2010, 2012, 2013, and 2016 editions of New Jersey "Super lawyers" by law and Politics Magazine. He was recently named by the New Jersey Law Journal as one of the "New Leaders of the Bar," which is a profile of rising stars in the New Jersey legal profession who are under the age of 40. Mr. Plata is admitted to practice law in the State of New Jersey.

John Rosero, Esq.,

was recently promoted to Vice President and Chief Legal Officer of Prudential Group Insurance, a business of Prudential Financial. He also joined the senior leadership team managing all legal groups supporting Prudential business units within the United States. As Chief Legal Officer, John has oversight of all legal matters related to Group Insurance's products, operations, services and strategy. Since joining Prudential in 1997, John has served in various roles of increasing responsibility, including Vice President and Chief Counsel for its Individual Life Insurance business, Chief Legal Officer for Prudential Annuities Distributors, a FINRA registered broker-dealer, and Chief Compliance Officer for Group Insurance. Prior to joining Prudential, Mr. Rosero was the Chief of the Civil Litigation Section and Assistant Corporation Counsel in the Office of the Corporation Counsel for the City of Newark, the largest municipality in the State of New Jersey. He previously served as a Judicial Law Clerk in the New Jersey Superior Court. In addition, he was a Senior Fellow in the Division of Global Affairs at Rutgers University and an adjunct professor at the Rutgers Business School. The Chief Justice of the New Jersey Supreme Court appointed Mr. Rosero to the Court's Committee on the Rules of Evidence, which makes recommendations and drafts proposed revisions to the rules of evidence. Mr. Rosero earned a Ph.D. in Global Affairs from Rutgers University, LL.M. in Corporation Law from New York University Law School, and J.D. from the State University of New York at Buffalo Law School. In addition, he has served as Deputy Regional President of the Hispanic National Bar Association (Region III) and is a long-time active member of the Hispanic Bar Association of New Jersey as well as a co-founder of the perennial HBA-NJ Corporate Counsel Roundtable.



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Hector D. Ruiz, Esq.,

is the incoming President Elect of the HBA-NJ and a litigation Partner at Walsh Pizzi O'Reilly Falanga LLP, where he focuses on complex commercial litigation in federal and state courts representing national and regional clients. The Walsh Firm, a Newark, New Jersey, based firm with offices located in New York City and Philadelphia, was launched in May of 2016, and its attorneys concentrate on complex commercial litigation, financial services and risk management, labor and employment law, and strategic counseling. "I am excited to be part of this new venture, along with my colleagues who are seasoned and highly skilled attorneys who are also well recognized within their respective practice areas. I am equally thrilled and proud that the Walsh firm is a majority women owned business." Prior to joining the Walsh Firm, Hector was a litigation partner at a major regional law firm, and prior to that, served as a judicial law clerk with the Honorable Jose L. Linares of the United States District Court for the District of New Jersey. Judge Linares is a former President of this Association. Hector earned his J.D. from Rutgers University School of Law, Camden, in 2001. He is admitted to practice in the States of New Jersey and New York.



A Special Feature on HBA-NJ Vice President of the Southern Region

Albertina (Abby) Webb, Esq.,

is the Vice President of the Southern Region of the HBA-NJ, as many of you already know, is a longtime member of the HBA-NJ and author of Querida Abby in the Abogados Newsletter. We are pleased to announce that she has joined the family law boutique firm in Freehold, New Jersey LaRocca Hornik Rosen Greenberg & Patti LLC, (LHRG&P) as a Partner. LHRG&P is a team of experienced and highly professional family law attorneys and professional assistants. They guide their clients through the divorce process, resolve related issues involving children, property and support, and provide services that address almost every other family law issues.



Abby is an active member of the New Jersey State Bar Association, and currently serves on its Family Law Executive Committee, where she is active on several of its sub-committees. She is a member of the Monmouth County Bar Association where she has recently been appointed to concurrent three-year terms on the Bar's Family Law Committee and Judicial Selection Committee.

She is also a member of the New York State Bar Association, Middlesex County Bar Association and Ocean County Bar Association and Family committee on each. Abby is a longtime member of the New Jersey Association for Justice (NJAJ), serving on its Matrimonial Committee, and also serves as a Matrimonial Early Settlement Panelist in Middlesex and Ocean Counties, and as an Intensive Settlement Panelist in Monmouth County and on the Statewide Domestic Violence Group Working Committee. She is the creator and contributor to the Monmouth and Ocean Family Lawyers blog, which tracks current family law issues and laws affecting parties going through a divorce, separation or custody proceedings.

Abby brings 18 years of experience to LHRG&P, which is a successful firm in its own right. Partner and founder Frank LaRocca answered the question: "What's the key to our success? We put families first. We work hard to achieve workable solutions that enable our clients to move forward with confidence. We stand up for them in settlement conferences and in litigation. We are there for our clients when they need us most." The firm has a statewide reputation for excellence. The attorneys have won wide recognition throughout New Jersey for their advocacy skills. Frank LaRocca and John A. Patti are certified in Matrimonial Law by the New Jersey Supreme Court — an honor granted to about one-tenth of 1 percent of the lawyers in the state. Frank LaRocca, John Patti, and Michele Crupi have been selected for inclusion in New Jersey Super Lawyers list. Abby is also licensed to practice in New York. She is a member of the New York State Bar Association, Family Law section and member of the child custody committee. Partner Michele Crupi, Esq. also practices in New York. Between the two of them, they have over two decades of knowledge, skill and experience. Together, their team brings decades of combined experience to benefit their clients. They offer a progressive, yet pragmatic approach to resolving their client's issues without compromising personal service. They handle divorce, custody, complex property division, domestic violence, agreement enforcement from inception to trial. The attorneys at LHRG&P take pride in their advocacy skills and ability to address every issue aggressively for their client's benefit. Abby says the attorneys in her office and the experts they utilize are experts in the family law field and dedicated to resolving their client's family law issues in the most positive way possible. ☀

The HBA-NJ wishes Abby Webb the best of luck in the newest chapter of her legal career and we thank her for her continued support and work on the HBA-NJ Board!



PRACTICE TIPS – THE IMPORTANCE OF BRIEF WRITING

BY: MELINDA COLÓN COX, ESQ.*

In a recent decision entered by the New Jersey Appellate Court, the panel elected to enter sanctions against an attorney for a brief submitted to the Court, because of the “utter indifference to the standards of professional competence a tribunal is entitled to expect from an attorney admitted to practice in this state.” The Court explained, “We cannot in good conscience, conclude this opinion without finding that the brief submitted by plaintiff’s counsel in this appeal warrants the imposition of monetary sanction pursuant to Rule 2:9-9. Because we are keenly aware of the extraordinary nature of this action, we want to explain the reasons underpinning our decision.” *Sackman v. NJ Manufacturers Insurance Company*, Docket No. A-3230-13T4 (N.J. Super. Ct. App. Div., April 26, 2016).

In explaining the basis of imposition of sanctions, the Court explained that “a sanction imposed under Rule 2:9-9 is intended to deter the improper prosecution or defense of an appeal and prevent the misuse of judicial resources that result from such derelictions.” See *id.* (citing *In re Tenure Hearing of Cowan*, 224 N.J. Super. 737, 752-53 (App. Div. 1988) (noting that an attorney’s failure to adhere to brief writing rules, such as Rule 2:6-2(a)(4), profoundly

undermines “the court’s ability to comprehend the material facts in the case”, as the constraints are “to produce a brief that is well-organized, thoughtful, comprehensible and to the point.”). In *Sackman*, the Court found that sanctions were warranted, because “the brief submitted by plaintiff’s counsel must be censured and sanctioned because it displayed an utter indifference to the standards of professional competence a tribunal is entitled to expect from an attorney admitted to practice law in this State. Even a cursory review of plaintiff’s appellate brief reveals a complete lack of any effort by counsel to cite and discuss, in a professionally reasonable manner, relevant legal authority in support of the three arguments raised therein.” See *id.* According to the Court, plaintiff failed to include legal support for the arguments set forth in the brief, citing to only a few cases and legal authority, without any legal analysis as to how the rulings applied to the facts of the case, and further failed to identify the relevant legal standards that the Court was required to apply in reviewing the lower court’s decision. In awarding sanctions, the Court noted: “Thirty-nine years ago, this court repudiated the same type of shoddy, unprofessional submission, and in the process endorsed the following standards

of professionalism that must be followed in the presentation of legal analysis in appellate briefs: ‘Despite the fact that independent research by the court is, to a greater or lesser extent, the invariable rule, the parties may not escape their initial obligation to justify their positions by specific reference to legal authority. Paucity of such reference suggests a like paucity of authority helpful to the party. The absence of any reference to the law, as here, suggests as well a regrettable and reprehensible indifference on the part of the brief writer not only to the rules but to the interest of the client as well.’” See *id.* (citing *State v. Hild*, 148 N.J. Super. 294, 297 (App. Div. 1977).

In support of its decision, the Court indicated that it was reaffirming its “commitment to the enforcement of the professional standards”, holding that “[l]awyers who take on the responsibility to represent clients before this court are expected to: (1) familiarize themselves with the record developed in the forum of origin; (2) research and analyze the competent legal authority related to the salient facts of the case; and (3) submit briefs in support of the arguments identified therein which reflect that the lawyers conducted these tasks in a diligent and professional

manner. . . . [T]his is the kind of professional effort an attorney owes to his or her client.” See *id.* While acknowledging that legal briefs and analysis would vary, the Court indicated that it cannot and will not accept “a lack of effort. . . . Plaintiff’s appellate counsel failed to conduct even a modicum of legal research or attempt to present any reasonably competent analysis of the law as it related to the facts of this case. By submitting a shoddy, professionally unacceptable brief, plaintiff’s appellate counsel displayed a disrespect for the work of this court and for the legal profession itself. The indifference to the fundamental tenets of the legal profession displayed here by plaintiff’s appellate counsel warrants the imposition of a monetary sanction under Rule 2:9-9.” See *id.* The Court ultimately entered sanctions in the amount of “\$200.00”, requiring a check to be issued to the Treasurer of the State of New Jersey. The moral of the story is that it is a privilege to be admitted to the bar of this great State. As attorneys, we have an obligation and ethical duty to zealously advocate for our clients, which requires including a thorough legal analysis and supportive legal authority in any motions and briefs submitted to the judiciary for review. In submitting an application to the court, we
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THE HONORABLE JULIO M. FUENTES

BY: HECTOR D. RUIZ, ESQ.

On October 28, 2016, there was a Special Session of the United States Court of Appeals for the Third Circuit for the Presentation of the Portrait of the Honorable Julio M. Fuentes. Another milestone in the extraordinary life of Judge Fuentes.

Whenever I've had the distinct pleasure of speaking to Judge Fuentes at social events, I have always been struck by his humility, patience, and kindness. I also think of his remarkable legal accomplishments and the fact that he is the first Latino to be named to the United States Court of Appeals for the Third Circuit. Finally, I inevitably remember his story—described in more detail below—and am always in complete awe. Judge Fuentes is an inspiration and a true American hero. He is not just a hero to Puerto Ricans, people of Puerto Rican descent like myself, or Latinos as a whole; he is an inspiration to all Americans.

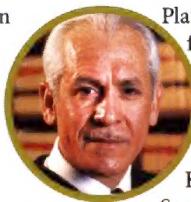
Judge Fuentes was born on February 16, 1946, in Humacao, Puerto Rico. In 1950, Judge Fuentes' mother, brought the family from Puerto Rico and settled in the South Bronx, New York. Through the hard work and commitment of his mother, Trinidad Mercado, a single mother of two, the family purchased and moved to a home in Toms River, New Jersey.

At Toms River High School, Judge Fuentes excelled as a student and athlete. He earned a District and Regional Championships in wrestling in 1964. He was undefeated his senior year until the state finals, where he placed second in the tournament. He was inducted into the National Wrestling Hall of Fame in 2005.

Judge Fuentes attended Southern Illinois University for two years before serving in the United States military from 1966 to 1969. Judge Fuentes completed U.S. Army's Airborne, Ranger and Officer Candidate School, and served a tour of duty in the Canal Zone, Panama.

Upon the conclusion of military service as a First Lieutenant, Judge Fuentes returned to Southern Illinois University and received his Bachelor of Arts degree in 1971. Judge Fuentes went on to receive his Juris Doctor degree in 1975 from the University of New York at Buffalo Law School. Judge Fuentes was admitted to practice law in 1975. He also completed master's degrees at Rutgers University and New York University while practicing law.

Judge Fuentes then became an attorney with law firm of Miller, Hochman, Meyerson & Schaeffer in Jersey City. In 1977, he started his own law firm, known as Fuentes,



Plant & Velazquez, in Jersey City. Shortly after the formation of his firm, however, Judge Fuentes was appointed as a part-time municipal judge for Newark and went onto serve as a full-time municipal judge from 1982 until 1987.

In 1987, then-New Jersey Governor Thomas Kean appointed Judge Fuentes to the New Jersey Superior Court, Essex County. In his eleven years on the state bench, Judge Fuentes served in all the major divisions, and for a short time as Presiding Civil Judge and subsequently as the Presiding Judge of the General Equity Division.

In 1998, Judge Fuentes' name was presented to the White House as a candidate for the United States District Court for the District of New Jersey. White House officials, upon interviewing Judge Fuentes, were so impressed by him that they submitted him as a candidate for the United States Court of Appeals for the Third Circuit. President William Jefferson Clinton nominated Judge Fuentes for the Circuit Court in March 1999. During his U.S. Senate Confirmation hearing, then-New Jersey Senator Frank Lautenberg said this:

Julio Fuentes clearly is the kind of candidate that we want on the federal bench. In many ways, his life demonstrates the promise of America—the idea that anyone committed to an education and working hard can build a distinguished career.

“Judge Fuentes wasn’t born to wealth or privilege. He was raised by a single parent—his mother who worked as a nurse. But he pursued his education diligently, earning a college degree while serving his country in the Army’s Special forces. Eventually, he earned not only a law degree but also two Masters degrees.”

His appointment was confirmed unanimously by the full Senate on March 7, 2000, and Judge Fuentes was sworn in as a Judge of the Third Circuit Court of Appeals on May 15, 2000.

Judge Fuentes is also a dedicated family man to his wife, Olma, and their three wonderful daughters Lily, Karina, and Olma. ☙

Judge Fuentes: a distinguished judge, a devoted family man, a diligent scholar, an outstanding soldier and officer—quite simply, an inspiration!



Drafting Arbitration Agreements that Comply with NJ's Heightened Standard *continued from page 1*

under the framework applicable to waivers of substantive rights. Under that heightened standard, an arbitration agreement will be enforced only if a party's waiver of the right to sue in court is "clear and unmistakable"; an acceptance of an offer to arbitrate alone is not enough. *Morgan v. Sanford Brown Inst.*, 225 N.J. 289, 308 (2016).

New Jersey courts have applied the "clear and unmistakable" standard in a way that appears to disfavor arbitration. In *Atalese v. U.S. Legal Services Group*, the defendant moved to compel arbitration pursuant to a fairly typical arbitration agreement that read as follows:

In the event of any claim or dispute between [consumer] and the [company] related to this Agreement or related to any performance of any services related to this Agreement, the claim or dispute shall be submitted to binding arbitration upon the request of either party upon the service of that request on the other party.

219 N.J. 430, 437 (2014), *cert. denied*, 135 S. Ct. 2804 (2015). The New Jersey Supreme Court refused to enforce this agreement because it did not state that "plaintiff is waiving her right to seek relief in court,"

"explain what arbitration is," or "indicate how arbitration is different from a proceeding in a court of law." *Id.* at 446.

Following *Atalese*, New Jersey courts have not hesitated to invalidate arbitration agreements in adhesion contracts that failed to include these "magic words." See, e.g., *Myska v. N.J. Mfrs. Ins. Co.*, 440 N.J. Super. 458 (App. Div. 2015) (insurance policy); *Kelly v. Beverage Works NY Inc.*, No. A-3851-13T4 (N.J. Super. Ct. App. Div. Nov. 26, 2014) (collective bargaining agreement); *Scamardella v. Legal Helpers Debt Resolution*, No. A-4170-14T3 (N.J. Super. Ct. App. Div. Apr. 19, 2016) (debt adjustment contract). In fact, even though the *Atalese* rule is based on the notion that the average layperson may not know the meaning of the term "arbitration,"

Atalese, 219 N.J. at 442, New Jersey courts have invalidated on this basis arbitration agreements even in commercial contracts between sophisticated parties, including a real estate contract negotiated by counsel, see *Dispenziere v. Kushner Companies*, 438 N.J. Super. 11 (App. Div. 2014), and an asset purchase agreement between two doctors, see *Rosenthal v. Rosenblatt*, No. A-3753-

12T2 (N.J. Super. Ct. App. Div. Oct. 24, 2014), *certif. denied*, 220 N.J. 575 (2015).

The New Jersey Supreme Court recently applied the *Atalese*

rule to invalidate an arbitration agreement's delegation clause. In *Morgan*, the plaintiffs argued that an arbitrator—and not a court—should decide whether the dispute was subject to arbitration based on the following provision in the arbitration agreement: "[A]ny objection to arbitrability or the existence, scope, validity, construction, or enforceability of this Arbitration Agreement shall be resolved pursuant to this paragraph." 225 N.J. at 297. The court, however, rejected this argument because "[t]he paragraph does not explain that an arbitrator will decide whether the parties agreed to arbitrate legal claims, including statutory violations; nor does it explain that arbitration is a substitute for bringing a claim before a court or jury." *Id.* at 306 (emphasis in original). The court also criticized the arbitration agreement's failure to comply with New Jersey's Plain Language Act insofar as it was not written in "a simple, clear, understandable and easily readable way"; rather, it was

confusing, hard to read, written in nine-point font and set forth in "thirty-five unbroken lines." *Id.* at 310 (internal quotation marks and citations omitted).

Tips for Drafting Enforceable Arbitration Agreements

It is unclear whether New Jersey's heightened standard will hold up over time. The Third Circuit Court of Appeals, in an unpublished opinion, recently observed that whether the *Atalese* rule "remain[s] viable as not preempted by the [FAA] presents an important and challenging question," but declined to reach the issue on appeal and remanded on other grounds. *Guidotti v. Legal Helpers Debt Resolution*, 639 F. App'x 824 (3d Cir. 2016). Nevertheless, *Atalese* is still the law in New Jersey and companies should make every effort to satisfy its requirements. Below are seven tips for drafting arbitration agreements that "clearly and unmistakably" demonstrate the parties' intent to arbitrate disputes as required by New Jersey law.

First, an arbitration agreement should make clear that the parties are waiving their rights to sue in court and to a jury trial, and identify the material differences between arbitration and a court proceeding, such as the fact that the dispute will be decided by an arbitrator and not a jury, and that



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discovery and appellate rights are limited in arbitration.

Second, a delegation clause should state, in no uncertain terms, that the arbitrator must decide arbitrability.

Third, if the transaction consists of multiple contracts with separate arbitration agreements, each agreement should be consistent in all material

wherever possible.

Fifth, an arbitration agreement should be conspicuous and offset by bold and/or capital letters where appropriate. If feasible, the first page of the contract should state that it contains an arbitration agreement and a class-action waiver (if applicable), and direct the party to the pertinent section(s) of the contract where such

negatives or exceptions to exceptions, sentences and sections that are arranged in a confusing or illogical order, words with obsolete meanings or that differ in their legal meaning from their common meaning, and frequent use of Latin phrases. See N.J.S.A. 56:12-10(a). Moreover, sections should be logically divided and captioned, a table of contents or an alphabetical

"The PLA requires consumer contracts to be "written in a simple, clear, understandable and easily readable way."

respects. This is so even if the contracts are prepared by different parties or cover different services. See, e.g., *NAACP of Camden Cty. E. v. Foulke Mgmt. Corp.*, 421 N.J. Super. 404 (App. Div. 2011) (refusing to enforce arbitration agreement between customer and car dealership because it conflicted with arbitration agreements in other contemporaneous contracts executed by the customer, including a financing agreement, notwithstanding the dealership's argument that it was not a party to those other agreements); *Souza-Bastos v. Federal Auto Brokers*, No. A-1594-15T3 (N.J. Super. Ct. App. Div. June 10, 2016) (same). Fourth, an arbitration agreement should be written in plain English using clear and understandable language, and avoid legalese or overly technical terms

provisions are located.

Sixth, a long arbitration agreement should not be presented in one paragraph. Instead, logically distinct provisions should be separated into different paragraphs with unique and instructive headings, such as "Arbitration Procedures," "Costs and Attorney Fees," "Exceptions to Arbitration Agreement" and/or "Class-Action Waiver."

Finally, contracts with consumers should comply with New Jersey's Plain Language Act (PLA). N.J.S.A. 56:12-1, et seq. The PLA requires consumer contracts to be "written in a simple, clear, understandable and easily readable way." N.J.S.A. 56:12-2. Therefore, consumer contracts should avoid cross-references that are confusing, sentences that are of greater length than necessary, sentences that contain double

index should be included if the contract contains more than 3,000 words, and conditions and exceptions should be given equal prominence with the main promise of the agreement and written in at least 10-point font. See N.J.S.A. 56:12-10(b).

Reynold Lambert is counsel in the Class-Action Practice Group at Lowenstein Sandler in Roseland.

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TURNING THE TABLES ON MORTGAGE SERVICERS AND LENDERS

BY: JAVIER MERINO, ESQ.

There may finally be hope for those consumers who are victimized and targeted by Wall Street-backed financial services companies.

This hope comes in the form of recent legislation (specifically the Dodd-Frank Act), regulatory activity by the Consumer Finance Protection Bureau (CFPB) and state and federal court decisions that have provided consumers with the much needed and long awaited tools to fight back against big, powerful banks, servicers, and debt buyers. Recent CFPB regulations created the incentive for private attorneys, through fee shifting statutes, class action lawsuits, and the elimination of forced arbitration clauses in consumer finance agreements, to bring lawsuits against mortgage servicers for abusive practices. This in effect has created a "private attorney general" in the consumer by providing them the private right of action to bring lawsuits against these servicers.

One of the best examples of this shift in tide was the CFPB's enactment of Regulation X to the Real Estate Settlement Procedures Act ("RESPA") and Regulation Z to the Truth in Lending Act ("TILA"). These regulations went into effect on January 10, 2014. With my practice primarily focusing on representing Borrowers in

foreclosure matters and disputes with mortgage services, I have personally seen how powerful these new regulations as are consumers face an increasing challenge from mortgage servicers and investors to save their homes from foreclosure. Recently, the *New York Times* documented a shift in servicing of defaulted home mortgages from big banks that dominated the market for decades to hedge fund backed non-bank loan servicers like Caliber Home Loans and Nationstar, which has created more trouble for homeowners. As the *New York Times* stated:

Housing advocates and lawyers for borrowers contend that the private equity firms and hedge funds are too quick to push homes into foreclosure and are even less helpful than the banks had been in negotiating loan modifications with borrowers. Goldstein, Matthew. "As Banks Retreat, Private Equity Rushes to Buy Troubled Home Mortgages." *New York Times* 28 Sept. 2015: A1. Web. 14 Oct. 2016.

Despite these new difficulties, the CFPB mortgage servicing regulations now allow for a private right of action that provide for shifting



attorneys' fees, and leveling the playing field between borrower and loan servicer. This has created a dual effect - an incentive for servicers to comply and act in good faith and a mechanism to punish those mortgage servicers who victimize borrowers and fail to comply with the new laws. Regulations X and Z have boosted my personal foreclosure practice my providing another tool in my arsenal against mortgage services in my representation of Borrowers.

In addition to dealing with mortgage servicing issues, millions of Americans are now facing the explosion of lawsuits by predatory debt buyers who have commandeered local courts to seek judgments and collect debts that are beyond the statute of limitations or based on usurious or illegal claims. Many of these debt purchasers rely on the fact that the consumers they are suing cannot afford legal counsel to defend themselves. This has resulted in a very high number of these cases ending in default judgment. These debt buyers count on the fact that those they sue will be unable to afford to retain counsel to defend themselves.

However, a recent U.S. Supreme Court decision (or

non-decision, depending on how you look at it), has provided some hope. The Supreme Court recently weighed in on a class-action lawsuit filed against debt collector Encore Capital Group, Inc., declining to hear Encore's claim that debt buyers should be protected from state usury laws prohibiting money-lending at unfairly high interest rates. By declining to review the 2nd Circuit Court of Appeal's opinion, they left in place a May 2015 ruling that held that Encore's Midland Credit Management and Midland Funding units were not national banks entitled to legal immunity from state usury laws.

Another example of the CFPB's consumer protection initiative is their release of regulations on the Payday and Auto Title lending industries. These regulations focus on payday and auto title lender predators who roll over these loans (which exponentially increase fees and interest rates) or extract payments repeatedly from borrowers' bank accounts, racking up exorbitant fees. The regulations also require short-term lenders to improve how they vet a borrower's ability to repay these loans. Although these regulations are a step in the right direction, I am concerned that the proposed rules do not go far enough as they fail to create a private right of action like

continued on page 11



Supporting Dreams and the Future of Our Nation – Part II

continued from page 1

those available under the new mortgage servicing regulations. Nonetheless, these rules represent a huge jump forward for consumers by establishing the standard of compliance that may give rise to future lawsuits with attorney fee shifting under state unfair and deceptive trade practice statutes, especially in light of the CFPB's proposed regulations preventing forced arbitration clauses in consumer finance contracts.

While these new regulations do not have the appeal of other major public policy initiatives, they nonetheless opened the door to those victimized by mortgage services, predatory payday lenders, and debt buyers by providing new tools for struggling consumers to bring claims on their own behalf.

Attorney Javier Merino has been fighting for homeowners and consumers since he graduated from St. John's University School of Law in 2013. Recognizing that the problem of fraudulent foreclosure practices was epidemic in New Jersey, Javier Merino partnered up with former Ohio Attorney General Marc Dann and established Dann & Merino, P.C., a law firm now representing homeowners throughout all of New Jersey. For more information, please visit their website at www.stopnewjerseyforeclosure.com.

in Union City, which is my hometown as well as his. On my day off, my friends and I visited the National Mall where all the historical monuments can be found.

Most importantly, the program changed my way of reasoning, and I was able to expand my horizons. Before

you have to vote for your senator, representative, governor, mayor, city council, etc. I am not old enough to vote in this election, but I look forward to seeing who the nominees are for the governor of New Jersey."

For Yaritza, the JSA

"I would like to thank the HBA-NJ for making my dreams become a reality, without your support this trip would not have been possible."

this program, I always held a notion that my belief was correct, but after meeting people from different backgrounds I was able to understand why people held different views.

Currently, I am not able to be as politically active (canvassing and phone bank) as I would like to because of school and cross country, but I try to inform my classmates on the importance of voting. Many people have this misconception that if they vote for the president that all the major problems will be solved, but to make any change you have to do more than vote for president;

Summer Program was a defining experience in her personal and professional development. Her story is one of perseverance and hope. A true testament to the impact the HBA-NJ's American Dream Pipeline Program can have on the lives of our future leaders.

If you are interested in serving as a mentor please contact Jonathan Barrera at jbarrera@passaiccountynj.org for Union City High School or Cristal Reyes at Cristal.Reyes@bedbath.com for Passaic High School and Jacky Pena at jacky.pena@gmail.com.

Calendar of HBA-NJ Meetings for the 2016-2017 Term

December 7, 2016

January 4, 2017

February 1, 2017

March 1, 2017

April 5, 2017

May 3, 2017

June 7, 2017

July 12, 2017

August 2, 2017

September 6, 2017

(General Membership & Nominations Meeting)*

October 4, 2017

All HBA-NJ meetings, except those marked with an "*" will be held in the New Jersey Law Center, One Constitutional Square Drive, New Brunswick, NJ. Meetings start at 6:30 p.m. and all general members are welcomed to attend.



THE REQUIREMENT TO POST PRICES IN NEW JERSEY

BY: NICHOLAS KANT, ESQ.

Many people may be unaware of the statutory requirement to post prices in New Jersey. The specific provision, which has been on the books since 1973 and is a part of the New Jersey Consumer Fraud Act (CFA), states as follows:

It shall be an unlawful practice for any person to sell, attempt to sell or offer for sale any merchandise at retail unless the total selling price of such merchandise is plainly marked by a stamp, tag, label or sign either affixed to the merchandise or located at the point where the merchandise is offered for sale.²

As defined by the CFA: "The term 'merchandise' shall include any objects, wares, goods, commodities, services or anything offered, directly or indirectly to the public for sale."³

A person violating the CFA shall "be liable to a penalty of not more than \$ 10,000 for the first offense and not more than \$ 20,000 for the second and each subsequent offense."⁴ Further, in an action or proceeding brought by the Attorney General or

a private party under the CFA, "the Attorney General shall be entitled to recover costs for the use of this State" and "the court shall also award reasonable attorneys' fees, filing fees and reasonable costs of suit."⁵ Also, consumer restitution can be obtained in a Superior Court action brought by the Attorney General or in an administrative proceeding.⁶ Additionally, if a private party demonstrates an ascertainable loss, "the court shall, in addition to any other appropriate legal or equitable relief, award threefold the damages sustained"⁷ Finally, after an administrative hearing, a violator can also be ordered "to cease and desist or refrain from committing said practice in the future," and in the Superior Court a judge can enter an injunction prohibiting such practices.⁸

Turning to the details of the price posting requirement, one may note that it gives the option of posting the price in one of two places: "affixed to the merchandise" or "located at



the point where the merchandise is offered for sale."⁹ While "affix" is not defined by the statute, the legal dictionary defines it as to "attach, add to, or fasten on permanently."¹⁰

The second clause was the subject of a published New Jersey Appellate Division opinion in 2010 by Presiding Judge of the Appellate Division Joseph F. Lisa.¹¹ Johnny Popper, Inc. (Johnny Popper), a used car dealer located in Clementon, was cited by the New Jersey Division of Consumer Affairs (Division) for violating the price posting requirement.¹² Johnny Popper had not affixed a sale price to any of its vehicles, nor were prices posted anywhere in the lot.¹³ Instead, a price list was maintained inside the building, which consisted of two letter-sized pages.¹⁴

Johnny Popper admitted that prices were not affixed to the vehicles, but claimed that they were "located at the point where the merchandise is offered for sale" and thus satisfied the statute.¹⁵ The initial hearing was before the Director

of the Division, who "concluded that the point where an item is 'offered for sale' is the place where the item is located, not where the sale transaction occurs," and thus found that the statute was violated.¹⁶

On appeal, the Appellate Division analyzed the legislative history of the price posting requirement, and found "a clear intent that consumers should be able to know the price of an item as they look at it and without having to inquire or interact with a salesperson."¹⁷ The car dealer's principal testified before the Director of the Division, and the Appellate Division stated that the practices described at the hearing "illustrate the evil this provision was designed to eliminate." The Appellate Division then quoted extensively from that testimony:

Q. Consumers come to your business and they look around at the cars on the lot, correct?

A. Yes.

Q. And then your salespeople approach the consumers and speak with them?

A. Yes.

Q. Outside in the lot, right?

A. Yes.

Q. And if the consumer asks for a price, the salesperson will tell them the price,

²Nicholas Kant is a graduate of the University of Colorado School of Law, Class of 2006. He is an attorney admitted to practice in the State of New Jersey.

³N.J.S.A. § 56:8-2.5.

⁴N.J.S.A. § 56:8-1(c).

⁵N.J.S.A. § 56:8-13.

⁶N.J.S.A. §§ 56:8-8, -11 and -19.

⁷N.J.S.A. §§ 56:8-8, -11 and -19.

⁸N.J.S.A. § 56:8-8 and 19.

⁹N.J.S.A. §§ 56:8-8 and -18.

¹⁰N.J.S.A. § 56:8-2.5.

¹¹Black's Law Dictionary 71 (10th ed. 2014).

¹²In re Johnny Popper, Inc., 413 N.J. Super. 580 (App. Div. 2010).

¹³Id. at 582.

¹⁴Ibid.

¹⁵Id. at 582-3.

¹⁶Id. at 583.



The Requirement to Post Prices in New Jersey *continued from page 12*

right?

A. Wrong.

Q. No?

A. No.

Q. What happens when a consumer asks for the price?

A. We go right up to the consumer and say how are you, do you know anything about how we do business, how we recondition the cars or the financing that we offer? They say no for the most part because they don't. We say come on inside, we'll sit down and explain to you everything we do and that's what we do and if they don't follow in, they go back in their car and leave and that's how the salespeople are instructed. There is just too much to go over, too much to do to be babbling in the lot.

Q. So a consumer who is outside looking at cars wants to know the price of a car, your salespeople don't tell them the price outside?

A. We don't discuss anything until we sit down at the desk to do business.

Q. So your salespeople as far as you know never tell consumers the price outside?

A. I would just about stake my life on it because they would lose their job. We have a way that we run the program.

The Appellate Division then interjected that "Although

[the principal] asserted that if a customer persists in learning the sale price before getting a sales pitch the price will be provided, he also gave this testimony":

Q. So once the consumer asks for the price, you take them inside, then the salesperson tells them the price?

A. No.

Q. No?

A. No.

Q. What happens?

A. First thing we do we sit down and tell them how we do things, which if the tires are on the used car are 50 percent or more it gets tires, the battery two years or more, It gets a battery,

income and other information before they know what the price of the vehicle is?

A. They are not particularly interested in the price of the vehicle, they want to know if they are going to get the loan and what vehicle will be.

....

Q. I believe you find out all this information like income before they ever find out what the price is?

A. Unless they ask for the price.

[Director]: Mr. Marter, yes or no.

THE WITNESS: Yes.¹⁹

The Appellate Division then further analyzed the purpose of the price posting

"supports the construction that if the sale price is not affixed to the vehicle, the alternative allowable place where it must be posted is in close proximity to where the customer finds the vehicle such that the customer can independently know the price while looking at the vehicle."²¹ The Appellate Division concluded that allowing "a comprehensive price list kept at the register" would defeat the purpose of the price posting requirement, and affirmed the decision of Director of the Division.²²

Since that time, the Division has continued to investigate violations

"The Appellate Division concluded that allowing "a comprehensive price list kept at the register" would defeat the purpose of the price posting requirement, and affirmed the decision of Director of the Division."

explained the warranty and so on and so forth and then if they are interested, we do a budget to make sure they can afford it because if they can't afford it, it's going to be a recall and that's not fair.

Q. What does the budget consist of?

A. What their income is and what their out go is.

Q. They are telling you their

requirement, such as providing "independent and certain price information to the consumer . . . without the necessity for interaction with a salesperson," and to facilitate "the desirable practice of comparison shopping by consumers without the need to interact with salespersons."²⁰ The Appellate Division thus stated that its analysis

of the price posting requirement. For example, between December 2015 and March 2016, the Division settled with at least seven companies after investigators allegedly found merchandise was offered for sale without a tag or label with the total selling price.²³ 

¹⁸ibid

¹⁹Id. at 585.

²⁰Id. at 586-7

²¹Id. at 587.

²⁰Id. at 588.

²¹ibid

²²Id. at 589 90.

²³See New Jersey Division of Consumer Affairs Reaches Settlement

with AutoZone Addressing Allegations of Pricing Violations; Prior Actions Against "Advance Auto" and "Pep Boys" Remain Pending, available at <http://www.njconsumeraffairs.gov/News/Pages/03292016.aspx>; and Consent Orders, available at http://www.njconsumeraffairs.gov/ocp/Legal%20Filings/20160118_crespo.pdf and <http://www.njconsumeraffairs.gov/ocp/Legal%20Filings/Jemima%20Loan%20Company%20Inc%20.pdf>



HISPANIC BAR ASSOCIATION OF NEW JERSEY YOUNG LAWYERS COMMITTEE SPOTLIGHT

The YLC had a busy summer and is looking forward to an equally active rest of the year! The YLC kicked off the summer with its 2nd Annual St. Bernard Project where members helped rebuild a home in Highlands, New Jersey that was damaged by Hurricane Sandy. Days after, over 120 attorneys and community leaders attended the Annual Summer Mixer at Pier 115 in Edgewater. The Summer Mixer was followed by a day of service at Cathedral Kitchen in Camden, New Jersey, where the YLC served families in need of a meal.

Cathedral Kitchen – 12.10.15



Buildable Hours: Saint Bernard Project – 07.10.16



YLC Annual Summer Mixer – 08.01.16



UPCOMING EVENTS

November 12, 2016

Charitable Sandwich Drive
Seton Hall Law School
Newark, New Jersey

November 23, 2016

Thanksgiving Feed the Seniors
Golden Door Charter School
Jersey City, New Jersey

December 8, 2016

Annual Holiday Mixer &
Toy Drive - Pier 115
Edgewater, New Jersey

December 10, 2016

Annual Volunteer Day at
the Community Food Bank
of New Jersey

ABOUT US

The Young Lawyers Committee is responsible for furthering the goals of the HBA-NJ in serving the Hispanic community and legal profession, while also furthering the interests of its young professional members. The committee serves its young professional members with mentorship, professional guidance, leadership development, and networking opportunities.

STAY CONNECTED

Please email YLC Co-Chairs Javier J. Diaz and Alyra Liriano at hbarjylc@gmail.com for any further information regarding the YLC. Additionally, please make sure to follow the YLC via the Facebook page "Hispanic Bar Association's Young Lawyers Division". You can find more pictures of these events on our Facebook page.



THE HBA-NJ AND VALUED MEMBERS SHINE AT THE 2016 HNBA'S CHICAGO ANNUAL CONVENTION "To plant a garden is to believe in tomorrow"

BY NATHANIA REYES AND APRIL CAMPOS¹

As soon as attendees crossed through the revolving doors of the Intercontinental Chicago Magnificent Mile, one thing demanded our attention, a prominent sign welcoming us to the 2016 Hispanic National Bar Association's ("HNBA") Annual Convention. This bright sign, igniting excitement and eagerness, foreshadowed the amazing events the conference would have to offer.

More importantly, as HBA-NJ members, we were extremely proud to be part of an organization that was being recognized as the HNBA Affiliate of the Year. Furthermore, two distinguished HBA-NJ members, who exemplify excellence and determination, also were honored at this year's HNBA Convention. Specifically, the Honorable Judge Esther Salas, U.S.D.J., was recognized as Latina Judge of the Year, and Camelia Valdes, Esq., Passaic County Prosecutor, was recognized as Latina Attorney of the year. The HBA-NJ truly demonstrated to the attendees of the Chicago Conference and the HNBA community that coming from the Garden State means more than just being rooted in the state's values – it demonstrated that the HBA-NJ nourishes our Hispanic culture to grow beyond limits and that we encourage our attorneys to branch out and think beyond state lines and beyond the unimaginable. The results of the hard work of every HBA-NJ attorney, judge, law student, and sponsor were clearly shown throughout this conference.

The Honorable Esther Salas, U.S.D.J., is a United States District Court Judge for the District of New Jersey. Judge Salas was appointed by President Barack Obama and unanimously confirmed by the Senate on June 14, 2011, making her the first Latina to serve in the District Court of New Jersey. Judge Salas is the daughter of Cuban and Mexican immigrants and was raised in Union City, NJ. She is a 1991 graduate of the Educational Opportunity Fund Program from Rutgers College and 1994 graduate of the Minority Student Program of Rutgers Law School, Newark, New Brunswick. Between 1997 and 2006, Judge Salas served as an Assistant Federal Public Defender for the District of New Jersey. In 2006, she was appointed U.S. Magistrate Judge for the District of New Jersey, becoming the first Latina in that position, in which she served for five years.

Judge Salas was presented with the HNBA "Latina Judge of the Year" award by the HNBA at their annual convention in Chicago this year. Judge Salas served as the 22nd president of the Hispanic Bar Association of New Jersey and is a past

president of the Hispanic Bar Foundation of New Jersey. She has also been a member of the Governor's Hispanic Advisory



Council for Policy Development, the New Jersey Supreme Court Committees on Minority Concerns and Women in the Court, and the Committee on Pro Se Litigation for the District of New Jersey. Since the inauguration of the HBA-NJ's American Dream Pipeline Program, Judge Salas has opened the doors to her Chambers to many young students, giving these high school students the opportunity to witness firsthand the administration of justice in the federal courts. Judge Salas' significant contributions to the Hispanic community, her proven positive impact on the justice system, and her demonstrated commitment to improving the administration of justice made her the perfect candidate to receive such a recognition from the HNBA.

Honoree Camelia Valdes, Esq. is the first Latina County Prosecutor in the State of New Jersey, the first female prosecutor in Passaic County, and the first lead prosecutor of Dominican ancestry in the United States. Ms. Valdes was born in the Bronx to Dominican parents and raised in Newark. Ms. Valdes has dedicated her professional career to government service. She served as Municipal Prosecutor in the City of Newark, a Deputy Attorney General in the New Jersey Attorney General's Office, and as an Assistant United States Attorney in the U.S. Attorney's Office in Newark. Prior to joining the United States Attorney's Office, Ms. Valdes served as an Assistant Counsel to Governor Christine Todd Whitman and Acting Governor Donald T. DiFrancesco where she handled all aspects of criminal law. In 2013, Ms. Valdes served as president of the County Prosecutors Association of New Jersey. She served as the 25th President of Hispanic Bar Association of New Jersey and as a trustee of the New Jersey State Bar Association.

At the conference, Ms. Valdes, deservedly received the HNBA Latina Attorney of the Year Award. Ms. Valdes commented that, "It is extraordinarily humbling to receive

¹ Nathania Reyes is a third year law school student at Rutgers Law (Newark). She is president of the Moot Court Board, a member of the lead

team for the Rutgers Law National Moot Court team, and outgoing president of the Association of Latin American Law Students. Nathania also is an active

member of the HBA-NJ.

² April Campos is a second year evening law school student at Seton Hall Law

Class of 2019. She is vice president of Seton Hall's Latin American Law Student Association and an active member of the HBA-NJ.



The HBA-NJ and Valued Members Shine at the 2016 HNBA's Chicago Annual Convention *continued from page 20*

the HNBA 2016 Latina Lawyer of the Year Award. The Award represents a recognition of the amazing opportunities awarded to a public servant to pursue justice on behalf of victims and communities. Grateful to share this experience with the Hispanic Bar Association of New Jersey who, through its amazing mentors and network, has provided support and guidance from the beginning of my legal career. Equally grateful to share honors with the Honorable Esther Salas and thank her for her example and our enduring sisterhood. Adelante!"

Finally, on September 8th, the HBA-NJ was awarded the prestige of being recognized as the HNBA "Affiliate of the Year." The HBA-NJ's was recognized for its commitment and constant success in working hard to advance and support the Hispanic community, its support of the HNBA and its dedication to the diversification of the legal profession, the judiciary and

government. Notably, this is the fourth time HBA-NJ has been recognized as the HNBA "Affiliate of the Year", and the second year in a row, which clearly emphasizes the HBA-NJ's

continued dedication to its mission, values and goals. Carlos Bollar, Esq., the outgoing president of HBA-NJ, praised the HBA-NJ for its award, stating that he "was honored that the Hispanic Bar Association of New Jersey was awarded Affiliate of the Year by the HNBA. This is a testament to all the hard work and exceptional programming our Board has done over the past year." Mr. Bollar and Arlene Quinones Perez, the incoming president of the HBA-NJ, celebrated this honor, along with Judge Salas' and Ms. Valdes' and other esteemed HBA-NJ members who were deservedly elected to leadership positions in the HNBA, including: (i) Anna Maria Tejada, Esq., who was re-elected as Region III President; (ii) Joseph Linares, Esq., who was elected as HNBA Young

"The HBA-NJ's was recognized for its commitment and constant success in working hard to advance and support the Hispanic community its support of the HNBA and its dedication to the diversification of the legal profession the judiciary and government."



Lawyers Division National President; and, (iii) Alyra Liriano, Seton Hall Law School – Class of 2017, was elected as the HNBA Law Student Division National President. These are just a few names of the many future leaders that the HNBA have elected from the Garden State.

In discussing the HBA-NJ honorees at this year's HNBA Convention, Arlene Quinones Perez proclaimed that we are "so proud that the Honorable Esther Salas, U.S.D.J. and Prosecutor Camelia M. Valdes were also honored by the HNBA as Latina Judge of the Year and Latina Attorney of the Year, respectively. Not only are they both past presidents of the HBA-NJ, but they continue to be leaders in our organization and role models for all our attorneys."

"Empowering Leaders," was the theme for the 2016 HNBA Conference in Chicago. During the Convention, the HNBA recognized the accomplishments of our Hispanic leaders and honored their exemplary service to our community. The HBA-NJ is no stranger to this motto. Since its inception, the HBA-NJ has sought to empower its leaders by encouraging Latino students to pursue a career in the law and by promoting their advancement within the profession once they start practicing. As rising law school students, participation in the HBA-NJ and HNBA has been invaluable and the mentoring and networking opportunities have opened many doors.

On Saturday, at the conclusion of the Conference, we packed our bags and said our goodbyes to mentors and friends, both old and new. Ultimately, there is no denying that the Garden State brought the sun to the Windy City, shining through the clouds to mold new paths for future Hispanic leaders from New Jersey. ☀️



2016-2017 CALENDAR OF EVENTS

NOVEMBER	Mentorship Program Kick-Off Event November 9 Rutgers School of Law, Newark Young Lawyers Committee Annual Sandwich Drive November 12 Seton Hall Law School, Newark 7 th Annual Corporate Counsel Conference November 15 NJPAC, Newark Su Negocio Program: Assisting Latino Small Businesses November 17 Jersey City Thanksgiving Feed the Seniors Day November 23 Golden Door Charter School, Jersey City
DECEMBER	Annual Holiday Party and Toy Drive December 8 Pier 115, Edgewater Young Lawyers Committee Annual Volunteer Day December 10 Community Food Bank of NJ, Hillside
JANUARY	Mentorship Resume and Networking Workshop Seton Hall Law School, Newark
FEBRUARY	6 th Annual Nuts and Bolts of the NJ State Appointment Process NJ Law Center, New Brunswick
MARCH	Women's Empowerment Leadership and Law Conference March 18 Cook College Student Center, Rutgers University, New Brunswick
APRIL	Sun, Surf & Seminars Conference
MAY	Southern Region Membership Mixer Vera Bar & Grill, Cherry Hill
JUNE	36 th Annual Scholarship Gala and Awards Dinner
AUGUST	Summer Mixer (Location TBA)
SEPTEMBER	Hispanic Heritage Month – Day of Action

ONGOING AND CONTINUING PROGRAMS AND EVENTS:

General Membership Meetings (Held at the NJ Law Center, New Brunswick)

Passaic High School & Union City High School Pipeline Programs

Young Lawyers Committee (Numerous Events, including Summer of Service)

Continuing Legal Education

Community Education Initiatives



QUERIDA ABBY

BY: ALBERTINA WEBB, ESQ.

Querida Abby – I heard that child support will automatically stop when my son turns 19 years old. He will be 19 in January. I am concerned because he will still be in college. Is this true and how will this be accomplished? I thought I would continue to receive child support as long as he was in college. —Alicia J.

Hola Alicia,

There is a new statute, 2A:17-56.67, that takes effect in New Jersey in February 2017 that will terminate child support when a child reaches the age of 19 years. The statute will make the parent who receives the child support file an application with the court and provide justification why child support should be continued.

The law says quite simply that child support “shall terminate by operation of law without order by the court when a child reaches 19 years of age unless:

1. The parties specify another age for termination of child support, “which shall not extend beyond the date the child reaches 23 years of age”;
2. A written request seeking the continuation of child support is submitted to the court by a custodial parenting prior to the child reaching the age of 19; or
3. The child receiving child support is in an out of home placement through DCPP.

The various probation departments will be issuing notices 180 and 90 days prior to each child’s 19th birthday. The parent receiving the notice who wants to continue receiving child support, must submit a notice on forms specifically created by the Administrative Office of the Court, stating reasons why child support should continue, such as:

1. The child is still enrolled in high school or other secondary education program;



2. The child is a student in a post-secondary program and is enrolled for the number of hours or courses the school considers to be full time attendance
3. The child has a mental or physical disability, determined by a Federal or State government agency; that existed prior to the child reaching the age of 19 and requires continued support; and
4. The child has exceptional circumstances for which the parent must file a motion to extend the obligation to pay child support beyond 19 years of age.

If child support is in fact terminated under this statute, but there are still arrearages owed to the other parent, the money must still be paid.

The account with Probation will not be closed until all arrearages are paid.

Based on your scenario, your child support obligation should continue because your son is enrolled in college on a full time basis. However, this is a brand new law and the system to put the directives in place may take some getting used to – for court and probation personnel and the litigants and their attorneys. If you have any questions about filing a motion or responding to a notice, contact an attorney familiar with family law practice. ☎

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Practice Tips – The Importance of Brief Writing *continued from page 6*

are advising the court that we believe there is a valid, legal basis for the court to enter a decision in support of the prosecution or defense of a matter – as an attorney, you should be making the court's decision easy by including a well-written, concise statement of your legal argument and the authority for your claims. The following is a list of practice tips and brief writing points, which should always be considered when writing and submitting a brief to any court:

Create an Outline of the Argument and Frame the Issue – Planning your legal argument is essential to a successful brief. This stage provides you with an opportunity to structure your key arguments and facts in a light that is most favorable to your client. Thus, before you start writing your brief, make sure you have a clear vision and outline of your argument and that you frame your key legal issues in an organized way that will make it easy for the Court to understand and follow your arguments. Know your argument and then structure your brief around the exact issue you want the court to address, keeping it as simple and concise as possible. Careful planning will help bring clarity and focus to your brief in a manner that is clear, concise and persuasive, by building the framework of your brief and argument.

Set Forth the Legal Standard of Review & Applicable Legal Authority – Make it easy for the court to understand why it should rule in your favor, clearly setting forth the legal standard of review and briefly summarizing the relevant case law and legal authority that should be applied. Tell the court exactly the ruling and relief you are seeking – never make a court guess. Providing a concise summary of your argument also will make it easier for the court to recognize your argument and to follow your logic as to why a decision in your client's favor is warranted.

Use Your Analytical Skills, Be Concise and Apply the Facts of Your Case – Always be an advocate for your client. The goal in any brief is to persuade the court that your position is right. Thus, set out a roadmap for the court with persuasive headings and address the key issues, holdings of relevant case law, and facts in your case that lend support to the relief requested. Also, think ahead – what will my adversary argue? – and defuse those arguments in your supporting papers, while still retaining your credibility by acknowledging potential deficiencies and demonstrating why the court should still rule in your favor (never overstate your position). You should always be completely honest and candid with the court. If you write concisely and apply the facts to the legal authority you presented, it should be easy for the court to rule in your favor.

Proofread, Cite Check and Confirm

Court Rules – Give the court the respect that it deserves. Proofread and cite check your cases. You should never have typos or grammatical or punctuation errors in your brief. Spellcheck and review your legal authority and case law to confirm that no decisions or rulings have been over-ruled. Finally, check the court's local rules, brief requirements, and any page and word limitations. Make sure you give yourself enough time – generally 1-2 days – to go back and review your brief to confirm that it is as concise and thorough as possible, free of any typos or errors and conforms to the local rules. When possible, have another attorney review the brief and offer input. Legal research and writing is a form of art that takes practice, proper planning, preparation, organization and time. It is critical to the practice of law and all attorneys should take pride in their final work product and submissions to the court. ☞

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